

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.R. No.6244 of 2004

Date of Decision:- 07.09.2006

DLF Housing and Construction
Company Ltd.

....Petitioner

through
Mr.Sanjay Vij, Advocate

vs.

Jiwan Khan & ors.

....Respondents

through
Mr.Lokesh Sinhal, Advocate

CORAM:-HON'BLE MR.JUSTICE SURYA KANT

SURYA KANT, J.

This revision petition is directed against the order dated 13.11.2001 passed by the Civil Judge (Jr.Division), Nuh whereby an application for restoration of the suit moved by the petitioner-plaintiff was dismissed, as well as against the judgment dated 28.9.2004 passed by the Additional District Judge, Gurgaon upholding the afore-said order.

Briefly stated, the facts of the case are that the plaintiff-petitioner filed a suit for declaration challenging *Fard Badar No.40* dated 16.7.1991 and also sought consequential relief of permanent injunction to restrain the defendants from interfering in its possession over the subject property. The plaintiff-petitioner led its entire evidence and when the case was fixed on 3.4.2001 for the defendants' evidence, no one appeared on its behalf as a result of which the learned Civil Judge (Jr.Div.), Nuh passed the

following order:-

“Present:- None for the plaintiff.

Sh.Abdul Rehman, Adv. for the defendants.

Case called several times but none has appeared for the plaintiff. It is already 12.30 P.M. Waited sufficiently. Further wait is not justified. Hence, the suit is dismissed in default u/o 9 Rule 8 CPC. Two DWs namely Jiwan Khan and Jagpal, DRK, DC record room, Gurgaon are present. Certified copy of order of redumption dated 5.5.59 and receipts filed on record. Summoned witness is discharged. File be consigned to record room.

Announced.

Dated: 3-4-2001

Civil Judge (Jr.Divn.)
Nuh.”

On 29.5.2001, the petitioner moved an application for restoration of the suit, inter alia, on the ground that its counsel, Shri Dinesh Kaushik, Advocate had informed on 13.2.2001 that the recording of the defendants' evidence would be a long drawn process, therefore, the duly authorized representative of the petitioner need not to attend the court proceedings. The said counsel also assured that he was well conversant with the facts of the case and will cross-examine the witnesses to be produced by the defendants. However, on 3.4.2001, Shri Dinesh Kaushik, Advocate could not attend the court proceedings on account of illness of his father. It was also averred that the above-named counsel kept on

informing the petitioner about the alleged dates of hearing fixed for the defendants' defence and it was only two days before moving the application that the petitioner-company came to know about dismissal of the suit in default and, thus, there is sufficient cause to restore the suit and hear it on merits.

The respondent-defendants, however, opposed the aforesaid application, inter alia, on the ground that the same was hopelessly time barred and that the plaintiff-petitioner was liable to suffer due to its own negligent act and conduct.

The learned Civil Judge (Jr.Div.), Nuh dismissed the above-stated application being barred by limitation.

Aggrieved, the petitioner preferred an appeal which has also been dismissed by the learned Additional District Judge, Gurgaon vide its impugned judgment and order. The learned First Appellate Court has observed that even if counsel for the plaintiff-petitioner could not appear on 3.4.2001 due to illness of his father, there is no explanation as to why the application for restoration could not be moved within 30 days and was filed only on 29.5.2001 i.e. after a period of 1 month and 26 days.

Still aggrieved, the plaintiff-petitioner has preferred this revision petition.

Notice of motion was issued and in response thereto, the respondents have put in appearance.

The facts noticed above, give rise to two questions, namely, as to whether or not the non-appearance of counsel for the plaintiff-petitioner on 3.4.2001 forms a 'sufficient cause' and is there any satisfactory

explanation by the petitioner or not as to why there was a delay of 1 month and 26 days in applying for restoration of the civil suit.

There is no denial to the fact that Shri Dinesh Kaushik, Advocate has supported the restoration application with his own affidavit. Sans of any personal interest in a case, a counsel would not file personal affidavit unless compelled by his consciousness to divulge truth. In the absence of any evidence to the contrary, there appears to be no valid reason to disbelieve the counsel that he could not appear before the Court due to illness of his father on that day.

So far as the second issue, namely, the delay in applying for restoration of the suit is concerned, it is well settled that the expression “sufficient cause” should receive a liberal construction so as to advance substantial justice, especially when no negligence, inaction or lack of bona fide is imputable to a party. There should be an endeavour to decide the cases on merits so that the rights of the parties are finally determined. No doubt, with the dismissal of the suit in default some valuable right did accrue in favour of the respondent-defendants, however, not of such a nature that they cannot be compensated in any other terms in lieu thereof.

It is not disputed that the petitioner had already led its entire evidence and the defendants' evidence could have been recorded ex-parte, if the plaintiff's counsel failed to appear on 3.4.2001 despite ample opportunity. Similarly, the learned trial Court, by resorting to its powers under Order 17, Rule 2 C.P.C., could decide the suit on merits also.

For the reasons stated above, I am of the view that the petitioner-plaintiff deserves one more opportunity to seek adjudication of its

suit on merits, however, after suitably compensating the respondents-defendants, who appear to be poor farmers.

Consequently, the revision petition is allowed. The impugned orders dated 13.11.2001 and 28.9.2004 passed by the Courts below are set aside, however, subject to payment of costs of Rs.50,000/- to the defendants-respondents which the petitioner shall tender before the trial Court on the date on which both the parties are directed to appear and the said amount shall be equally distributed amongst the defendants. Since the civil suit was filed in the year 1992, the learned trial Court is directed to make an endeavour to decide of the same as early as possible, preferably within six months.

The parties are directed to appear before the trial court on 19.10.2006.

September 07, 2006
poonam

(SURYA KANT)
JUDGE